



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,592	03/23/2004	Peter Collier	1367-28	2443
81099	7590	01/23/2009	EXAMINER	
Thomas M. Galgano			SPAHN, GAY	
20 W. Park Avenue			ART UNIT	
Suite 204			PAPER NUMBER	
Long Beach, NY 11561			3635	
			MAIL DATE	DELIVERY MODE
			01/23/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of Abandonment**Application No.**

10/806,592

Applicant(s)

COLLIER ET AL.

Examiner

Gay Ann Spahn

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 09 July 2008.
- (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
- (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
- (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
- (c) ☒ A reply was received on 12 January 2008 but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
- (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
- (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
- (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
- The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
- (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
- (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
- (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

See Continuation Sheet.

/Gay Ann Spahn/
Gay Ann Spahn, Primary Examiner
January 17, 2009

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Continuation of Box 7: The examiner notes that on 12 January 2009, the United States Patent and Trademark Office received a one-page "Request for Continued Examination (RCE) Transmittal" (i.e., Form-PTO/SB/30) which had a "Certificate of Mailing or Transmission" thereon dated 09 January 2009 signed by Mr. Thomas M. Galgano and which authorized the "Supplemental Amendment and Reply to Election/Restriction Required filed June 14, 2006" to be considered as the submission. Also received on 12 January 2009 was a one-page "Petition for Extension of Time Under 37 CFR 1.136(a) FY 2009" (i.e., Form-PTO/SB/22) which authorized the Director to charge a \$555.00 extension of time fee and any other fees required to a deposit account. This did not constitute a proper reply to the Non-Final Office Action mailed 09 July 2008 or a bona fide attempt at a proper reply because 37 CFR 1.114(a) clearly states "If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in 1.17(e) . . .". Since prosecution in the present application was not closed after the Non-Final Office Action mailed on 09 July 2008, Applicants' filing of a RCE in response to a Non-Final Office Action mailed 09 July 2008 cannot be considered to constitute a proper reply or an attempt at a proper reply. Further, as no amendment or response has been submitted in response to the Non-Final Office Action mailed 09 July 2008, which amendment or response would serve to place the application in condition for allowance, the present application is abandoned.

/Gay Ann Spahn/
Gay Ann Spahn, Primary Examiner
January 17, 2009